

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RONALD HOLTZ,

Plaintiff,

V.

MARTHA KARR, MARVIN
SPENCER, C KOLLIN, SHARLA
JAMES-HUTCHINSON, K MILLER,
BRASWELL, JUDY SNOW, DANNY
OTA, M JOURNEY, RICHARD
ODEGARD, PIERCE COUNTY
DETENTION AND CORRECTIONS
CENTER, MICHAEL KAWAMURA,
RICHARD WHITEHEAD,
DEPARTMENT OF ASSIGNED
COUNSEL.

Defendants.

No. C12-5111 RJB-KLS

REPORT AND RECOMMENDATION

Noted for: April 17, 2015

Before the Court is Defendant Pierce County's motion for summary judgment. Dkt. 124.

Plaintiff Ronald Holtz is currently confined at the Washington Department of Corrections. This lawsuit was filed on February 9, 2012, while he was in custody at the Pierce County Jail. Pierce County and the other named defendants filed two successive motions to dismiss which the Court granted in part, dismissing all of Mr. Holtz's claims except his religion-based claims against Pierce County.

1 Defendant Pierce County's motion for summary judgment was originally filed on
 2 November 14, 2014 and noted for consideration on December 19, 2014. Dkt. 124. Mr. Holtz's
 3 deadline to respond to the motion was extended twice – the first time until February 6, 2015 and
 4 the second time until March 6, 2015. Dkts. 140 and 142. Mr. Holtz has had over three months
 5 to respond to the motion. His third request for an extension was denied. Dkts. 146¹.
 6

7 The undersigned recommends that Pierce County's motion for summary judgment be
 8 granted and this lawsuit dismissed with prejudice.
 9

FACTS

A. Facts Pertaining to Exhaustion

11 The Pierce County Jail has a four-step process for inmates seeking review of an issue.
 12 In 2012, the Inmate Grievance Process instructed inmates as follows:

13 Steps Inmates Should Follow For Resolving a Grievance:

- 15 1. Request resolution assistance from unit officer. If not resolved,
 proceed to step #2.
- 16 2. Submit a KITE to the appropriate supervisor to address the inmate's
 issue. Kites must be submitted within 10 days of the date the issue of concern
 occurred.

19 Issue	Supervisor
20 Mental Health Clinic/Medical	Specific MHP or Mental Health Unit Kite Nurse
21 Food Services	Programs Sergeant
22 Commissary	Programs Sergeant
Classification	Classifications Sergeant
Religious	Chaplin

24 The supervisor will respond within 10 working days. If not resolved, proceed
 to step #3.

26 ¹ The Court has also considered Mr. Holtz reply and request filed on March 30, 2015. Dkts. 147 and 148.

1 3. When the inmate receives a reply from the supervisor on the returned kite,
2 the inmate may grieve the response on a grievance form. The time limit for filing
3 a grievance is 25 days from the date of the original request/kite.

4 The supervisor will respond within 10 working days. If not resolved proceed
5 to step #4.

6 4. An inmate may appeal the grievance response within 20 calendar days
7 from the date the responder signed the grievance form. The appeal may address
8 only the issue in the original grievance. Specific reason for appeal must be stated
9 and appeals may not be combined.

10 The supervisor of the responder will respond within 10 working days of the
11 appeal receipt.

- 12 • If steps 1 through 3 are not followed the kite/grievance may be rejected.
- 13 • Inmates may be sanctioned for submitting false or frivolous grievances.
- 14 • Kites or grievances will be rejected for inappropriate or threatening
15 language.
- 16 • Kites or grievances will be rejected if they have spills or unknown
17 substances on them.
- 18 • One issue is allowed per kite or grievance or the kite or grievance may be
19 rejected.
- 20 • An inmate may not submit a kite or grievance on behalf of another inmate.
- 21 • A kite or grievance may not be filed by a group of inmates.
- 22 • If additional space is needed additional sheets may be added.

23 Dkt. 127, Declaration of Maureen Weber, Program Coordinator, Pierce County Sheriff's Office,
24 at 2:17, Exhibit A ("Inmate Grievance Process").

25 Mr. Holtz received a copy of the Inmate Grievance Process in October 2009 in response
26 to a grievance. Dkt. 130, Declaration of Steven Jones, Pierce County Jail Correctional
Lieutenant, at 2, Exhibit A, p. 4. In January 2012, Mr. Holtz requested and received his own
personal copy of the Inmate Handbook, which contains a copy of the Inmate Grievance Process.

27 Dkt. 145, Declaration of Katherine Miller, Pierce County Correctional Sergeant, at 3:24-4:7.

28 According to Sergeant Miller, a copy of the Inmate Handbook was already available for review
29 in Mr. Holtz's jail unit. *Id.*, Miller Declaration, at 4:2-5. In March 2012, Mr. Holtz received two

1 additional copies of the Grievance Process, each in response to grievances he had filed. Dkt.
2 127, Declaration of Maureen Weber, Program Coordinator Pierce County Sheriff's Department,
3 at 2:17-21; Dkt. 128, Declaration of Martha Karr, Captain Pierce County Sheriff's Department,
4 at 2:4-9.

5 Mr. Holtz used the inmate grievance process many times during his various periods
6 of confinement at the Pierce County Jail. From 2009 to 2012, he filed 56 grievances, and he
7 filed appeals of the grievance responses he received in 48 of these instances. Dkt. 127, Weber
8 Declaration, at 3:17-19. Mr. Holtz filed 25 of these grievances in 2012 alone. *Id.*, at 3:19-20.

10 Only five of the grievances filed pertained to religion-based claims. *Id.*, at 4:6-22. Pierce
11 County Jail Chaplain Richard Odegard worked with Mr. Holtz with his religion-based concerns.
12 Chaplain Odegard was employed from 1999 to 2011 as the Pierce County Jail's chaplain and
13 thereafter, he became the jail's program coordinator. Dkt. 126, Declaration of Richard Odegard,
14 at 1:23-25. He retired from Pierce County in May 2013, but he continues to perform volunteer
15 work in the Pierce County Jail on a regular basis. *Id.*, at 1:25-2:1. Chaplain Odegard was the
16 supervisor with regard to religion-based issues. *Id.*, at 2:23-24; Dkt. 127, Weber Declaration, at
17 Exhibit A.

19 During the times that Mr. Holtz was incarcerated at the Pierce County Jail, he
20 communicated many times with Chaplain Odegard about his religion-based concerns and
21 requests. Dkt. 126, Odegard Decl., at 2:2-4. Chaplain Odegard believes it is possible that he
22 spent more time during his career at Pierce County working with Ronald Holtz than with any
23 other inmate. *Id.*, at 2:4-6. Chaplain Odegard received kites and other communications from
24 Mr. Holtz concerning issues such as Halal meals, Ramadan fasting, requests for an extra towel to
25 use as a prayer rug (which were provided to him), Muslim reading material, and requests to be

1 placed in communication with specific clergy or religious advisors. *Id.*, at 2:8-14.

2 Chaplain Odegard recalls only one instance when Mr. Holtz requested a grievance form.
3 Dkt. 126, Odegard Declaration, at 3:8-9. In July 2012, Chaplain Odegard sent Mr. Holtz and
4 other Muslim inmates an erroneous notification concerning the start date of Ramadan and when
5 Chaplain Odegard discovered his error, he sent inmates a correction notice. Mr. Holtz requested
6 a grievance form over the error apparently prior to receiving Chaplain Odegard's correction. *Id.*,
7 Odegard Declaration, at 3:10-4:8.

8 Mr. Holtz raises numerous religion-based allegations in this lawsuit. However, he filed
9 no grievances with regard to the following allegations:

10 (a) Access to ritual food items such as dates;
11 (b) The wearing of religious dress, such as the kufi (cap) and pants with a
12 certain hem length;
13 (c) Access to items for religious worship such as prayer rugs, prayer beads,
14 prayer oil, or miswaks;
15 (d) Congregate prayer and religious study;
16 (e) The availability of Islamic reading material for Muslim inmates;
17 (f) The availability of sponsors or volunteers to support Muslim inmates;
18 (g) Being interrupted by staff while in prayer;
19 (h) The handling of sacred items by staff; and
20 (i) The Responsible Living Unit.

21 Dkt. 127, Weber Declaration, at 4:25-5:13; Dkt. 126, Odegard Declaration, at 4:10-24.

22 **B. Facts Pertaining to Five Religion-Based Grievances**

23 Mr. Holtz filed five religion-based grievances from March 7, 2012 to September 16,
24 2012:

1) **Grievance Number 12-1034, filed on March 7, 2102**

2 On March 7, 2012, Mr. Holtz filed a grievance alleging that desserts had been missing
3 from his Halal meal sack for the previous one-week period; he also alleged he was only given
4 one two-ounce packet of Halal meat with his meal instead of two packs. Dkt. 129, Declaration
5 of Sabrina Braswell-Bouyer, Correctional Sergeant Pierce County Jail, at 2:5-13.

6 On March 12, 2012, a sergeant responded in writing to Mr. Holtz's grievance:

7 Inmate Holtz, I will discuss the portions for the Halal meals. If the
8 portions are not being given correctly, I will correct it immediately. Please kite
9 me in the future first before filing a grievance.

10 On March 27, 2012, Mr. Holtz filed an appeal in which he acknowledged:

11 The one/single pack of meat situation was remedied back to 2.

12 Dkt. 129, Braswell-Bouyer Declaration, at 2:4-20, Exhibit A; 3:5-8, Exhibit A. Mr. Holtz did
13 not mention the dessert issue in his appeal, but instead raised other food inquiries. *Id.*, 3:1-4,
14 Exhibit A.

15 2) **Grievance Number 12-1036, filed March 15, 2012**

16 On February 23, 2012, Mr. Holtz requested to be placed on a Halal diet to accommodate
17 his Muslim religion and Chaplain Odegard granted this request. Dkt. 126, Odegard Declaration,
18 at 6:1-3. On March 15, 2012, Mr. Holtz filed a grievance because he wanted to be able to buy
19 Kosher food items in the commissary without being taken off his Halal diet. *Id.*, at 6:4-11. Mr.
20 Holtz was correct in his assertion that inmates on the Halal diet were allowed to purchase and eat
21 Kosher items without being found in violation of their religious diet. *Id.*, at 6:12-13. Mr. Holtz
22 subsequently bought Kosher items from the commissary and he was never penalized or taken off
23 his Halal diet for so doing. *Id.*, at 6:13-24.

1 **3) Grievance Number 12-1046, filed April 1, 2012**

2 On April 1, 2012, Mr. Holtz filed a grievance because during a visit with a minister, he
3 and the minister had been placed in a standard visitation booth, which caused their
4 conversation to be recorded. Dkt. 132, Declaration of James R. Scollick, Corrections Deputy,
5 Pierce County Jail, at 2:3-8, Exhibit A. In response to the grievance, Mr. Holtz was advised that
6 a designated non-recorded booth (Booth 31) was available for inmates whenever an inmate
7 wanted a private clergy or attorney visit to remain unrecorded. *Id.*, at 2:8-11. An inmate who
8 wanted to use Booth 31 needed to ask to be placed in that booth prior to the visit. According to
9 Deputy Scollick, if Mr. Holtz had requested to use that booth for his clergy visit, he would have
10 been allowed to use it. *Id.*, at 2:12-13.

12 **4) Grievance Number 12-1087, filed June 5, 2012**

13 On June 5, 2012, Mr. Holtz filed a grievance over a contact he had with one of the
14 corrections deputies. Dkt. 131, Declaration of Charles Kollin, Correctional Lieutenant Pierce
15 County Jail, at 2:2-4. Mr. Holtz stated in his grievance that he was housed in a “dry cell unit,”
16 which is a unit that does not have attached restrooms accessible at any time by the inmates; he
17 stated that Corrections Deputy Hernandez let him out of the cell “to use [the] restroom and purify
18 [himself] for prayer. . . .” Mr. Holtz then states: “I was denied the right to purify/practice my
19 religion by him w/ threats of 3-S (solitary). In short, he told me that he didn’t give a fuck about
20 Allah, God, prayer, and I could grieve, sue, or whatever, but he was going to send me to the hole
21 for the rest of the time I was here and he didn’t care about my medical problems (renal) either.
22 So I wasn’t let out again.” *Id.*, Kollin Declaration, at 2:11-15, Exhibit A.

25 Mr. Holtz’s grievance was denied and he filed an appeal on June 16, 2012. Lieutenant
26 Kollin reviewed the grievance for purposes of the appeal and verified that contrary to any

1 alleged “threats,” Mr. Holtz had not in fact been placed in solitary confinement. Dkt. 131, Kollin
2 Declaration, at 2:20-23. Instead, Mr. Holtz was moved to a different unit on June 6, 2012 at
3 about 7:24 a.m., which was within 9 hours of the jail’s receipt of Mr. Holtz’s grievance. *Id.*, at
4 2:23-3:3. The new cell was in a different location away from the C/O Hernandez and it provided
5 Mr. Holtz with unlimited and immediate access to both a restroom and cleansing facilities. *Id.*, at
6 3:5-9.

7

8 **5) Grievance 12-1177, filed September 16, 2012**

9 On September 16, 2012, Mr. Holtz filed a grievance because he wanted to be moved to a
10 housing unit that provided more private bathroom facilities and fewer distractions for prayer.
11 Dkt. 126, Odegard Declaration, at 7:4-12, Exhibit E. Mr. Holtz was housed in Unit 3ED, which
12 is an open unit designed to hold sixteen inmates with dorm-style bunk beds and shared bathroom
13 facilities. Dkt. 128, Karr Declaration, at 3:20-4:1. The unit has two toilets, one of which has
14 metal privacy partitions on each side to prevent a person from being seen, from the neck or upper
15 trunk downward, when seated on the toilet. The unit has a shower, and the shower stall has a
16 curtain. An inmate could shower and then towel off behind the curtain without being seen. *Id.*,
17 Karr Declaration, at 4:2-7; 4:8-9, 9-11.

18

19 Mr. Holtz requested a private room because he alleged that other inmates walked around
20 him when he prayed and the television was constantly on. Dkt. 126, Odegard Declaration, at
21 7:11-12, Exhibit E. In response to Mr. Holtz’s concerns, Chaplain Odegard attempted to contact
22 various representatives of the Islamic community because Chaplain Odegard had not
23 encountered this concern before regarding the jail’s open dorm-type setting. *Id.*, at 7:18-19.
24 Chaplain Odegard also researched Islamic websites and literature in an effort to find information
25

1 addressing Mr. Holtz's concerns. *Id.*, at 7:23-24. By September 20, 2012, Chaplain Odegard
 2 had not found information supporting Mr. Holtz's request for a private room. *Id.*, at 7:25-8:1.

3 Chaplain Odegard responded to Mr. Holtz's grievance in writing and outlined the steps
 4 he had taken to gather information. Dkt. 126, Odegard Declaration, at 8:1-2. Mr. Holtz filed an
 5 appeal of Chaplain Odegard's response on September 23, 2012. *Id.*, at 8:2-3. Four days later,
 6 on September 27, 2012, Mr. Holtz was transported out of the jail and into the custody of the
 7 Washington State Department of Corrections. *Id.*, at 8:3-4.

9 **STANDARD OF REVIEW**

10 Summary judgment is proper when there is no genuine issue as to any material fact and
 11 the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56(a). Where the
 12 party opposing a motion for summary judgment will have the burden of proof on an issue at trial,
 13 the moving party can prevail by "pointing out to the district court ... that there is an absence of
 14 evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325,
 15 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the moving party meets this initial burden, the
 16 opposing party must then "set forth specific facts showing that there is a genuine issue for trial"
 17 in order to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct.
 18 2505, 91 L.Ed.2d 202 (1986) (quotation marks omitted); Fed.R.Civ.P. 56(e). In deciding a
 19 motion for summary judgment, a court draws all inferences in the light most favorable to the
 20 party opposing the motion. *Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F.2d 665, 668 (9th cir.
 21 1980).

24 **DISCUSSION**

25 **A. Exhaustion**

26 The Prison Litigation Reform Act ("PLRA") provides that "[n]o action shall be

1 brought with respect to prison conditions under section 1983 of this title, or any other Federal
 2 law, by a prisoner confined in any jail, prison, or other correctional facility until such
 3 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). “Exhaustion
 4 gives an agency an opportunity to correct its own mistakes with respect to the programs it
 5 administers before it is haled into federal court, and it discourages disregard of the agency’s
 6 procedures.” *Woodford v. Ngo*, 548 U.S. 81, 89, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006).
 7 Exhaustion also promotes efficiency in that “[c]laims generally can be resolved much more
 8 quickly and economically in proceedings before an agency than in litigation in federal court.”
 9 *Woodford*, 548 U.S. at 89.

10 The PLRA requires “proper exhaustion,” *i.e.*, compliance with the governmental
 11 entity’s critical procedural rules governing its administrative grievance or appeals procedure.
 12 *Woodford*, 548 U.S. at 93–95. “There is no question that exhaustion is mandatory under the
 13 PLRA and that unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199,
 14 211 (2007). The court determines whether an inmate’s claim has been exhausted by reference to
 15 the prison’s own grievance requirements. *Griffin v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir.2009).
 16 The failure to exhaust administrative remedies in a PLRA case is an affirmative defense to be
 17 plead and proven under Rule 56. *Albino v. Baca*, 747 F.3d 1162, 1169-70 (9th Cir. 2014).

18 The record reflects that Mr. Holtz failed to use existing and available administrative
 19 remedies with regard to all but five of his religious claims although he was aware of the Inmate
 20 Grievance Process. Since 2009, he had been provided with and had access to multiple written
 21 copies of the Inmate Grievance Process. Dkt. 130, Jones Declaration, at 2:17-19; Dkt. 145,
 22 Miller Declaration, at 3:24-2:7; Dkt. 127, Weber Declaration, at 2:17-21; Dkt. 128, Karr
 23 Declaration, at 2:7-9. From 2009 to 2012, Mr. Holtz filed approximately 56 grievances and he

1 filed appeals of the grievance responses he received in 48 instances. Dkt. 127, Weber
2 Declaration, at 3:17-23.

3 The Inmate Grievance Process required inmates to first seek resolution assistance from
4 the unit officer and then submit a kite to the appropriate supervisor. Dkt. 127, Weber
5 Declaration, at 2:21-25. The supervisor for religion-based matters was Richard Odegard. Dkt.
6 126, Odegard Declaration, at 2:22-24. According to Chaplain Odegard, he had numerous
7 contacts with Mr. Holtz throughout Mr. Holtz's confinements at the Pierce County Jail and
8 possibly spent more time with Mr. Holtz than any other inmate. *Id.*, Odegard Declaration, at 2:2-
9 8. During that time, Mr. Holtz requested only one grievance form from Chaplain Odegard (with
10 regard to Chaplain Odegard's mistake concerning the start date of Ramadan, a mistake that was
11 corrected). Dkt. 126, Odegard Declaration, at 4:9-11.

12
13 Mr. Holtz failed to file grievances concerning the following claims while in custody in
14 the Pierce County Jail:

15 (a) Access to ritual food items such as dates;
16 (b) The wearing of religious dress, such as the kufi and pants with a certain
17 hem length;
18 (c) Access to items for religious worship such as prayer rugs, prayer beads,
19 prayer oil, or miswaks;
20 (d) Congregate prayer and religious study;
21 (e) The availability of Islamic reading material for Muslim inmates;
22 (f) The availability of sponsors or volunteers to support Muslim inmates;
23 (g) Being interrupted by staff while in prayer;
24 (h) The handling of sacred items by staff; and
25 (i) The Responsible Living Unit.

1 Dkt. 80, Second Amended Complaint, at 13-19; Dkt. 127, Weber Declaration, at 4:25-5:13; Dkt.
 2 126, Odegard Declaration, at 4:9-23.

3 Based on the foregoing, the undersigned recommends that Mr. Holtz's claims listed in
 4 paragraphs (a) through (i) above be dismissed without prejudice for failure to exhaust. See
 5 *Wyatt*, 315 F.3d at 1120 ("[t]he proper remedy, where a prisoner has failed to exhaust non-
 6 judicial remedies, is dismissal of the claim without prejudice.")
 7

8 **B. Remaining Five Religion-Based Claims**

9 The First Amendment guarantees the right to the free exercise of religion. *Cruz v.*
 10 *Beto*, 405 U.S. 319, 322, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). The protections of the Free
 11 Exercise Clause are implicated when prison officials burden the practice of an inmate's
 12 religion by preventing him from engaging in conduct which he sincerely believes is consistent
 13 with his faith. *Shakur v. Schriro*, 514 F.3d 878, 884 (9th Cir. 2008); *Freeman v. Arpaio*, 125
 14 F.3d 732, 737 (9th Cir. 1997), *overruled in part by Shakur*, 524 F.3d at 884-85. However, the
 15 right of free exercise "is necessarily limited by the fact of incarceration, and may be curtailed
 16 in order to achieve legitimate correctional goals or to maintain prison security." *O'Lone v.*
 17 *Shabazz*, 482 U.S. 342, 348 (1987).

18 **1) Grievance 12-1034: Halal Meat and Dessert Portions**

19 The record reflects that Mr. Holtz's concerns regarding the Halal meat and dessert
 20 portions were addressed and corrected within ten days after he filed his grievance. Dkt. 129,
 21 Braswell-Bouyer Declaration, at 2:3-3:7. A mere inconvenience does not equate to a substantial
 22 burden on the free exercise of religion. *Freeman*, 125 F.3d at 737. Mr. Holtz fails to show how
 23 a ten day delay before an error in his meal portions constituted a substantial burden on the free
 24 exercise of his religion.

1 **2) Grievance 12-1036: Purchasing Kosher Food Items**

2 Mr. Holtz filed a grievance because he wanted to purchase Kosher food items from the
3 Commissary without being found in violation of his Halal diet. The record reflects that Mr.
4 Holtz was able to purchase Kosher food items without being found in violation of his Halal diet.
5 Dkt. 126, Odegard Declaration, at 6:4-24. Mr. Holtz fails to show how the ability to purchase
6 Kosher items constituted a substantial burden on the free exercise of his religion.
7

8 **3) Grievance 12-1046: Availability of Non-Recorded Visitation Booth**

9 Mr. Holtz filed a grievance over a visitation he had with a clergy member that took
10 place in a recorded visitation booth. At the time, the jail had a non-recording booth available
11 on demand for inmates to meet with clergy. Dkt. 132, Scollick Declaration, at 2:8-14. Although
12 it was available, Mr. Holtz apparently did not request this booth prior to his clergy visit. Mr.
13 Holtz fails to show how his use of a recorded visitation booth on one occasion constituted a
14 substantial burden on the free exercise of his religion.
15

16 **4) Grievance 12-1087: Threat of Solitary Confinement**

17 Mr. Holtz alleges that a corrections deputy violated his rights by threatening him with
18 solitary confinement and by using inappropriate language directed at Mr. Holtz's religious
19 background. At the outset, it is noted that because there is no respondeat superior liability under
20 § 1983, Mr. Holtz cannot show municipal liability as to Defendant Pierce County based on the
21 deputy's alleged behavior. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 692,
22 (1978) (alleged unconstitutional acts of a government agent cannot, standing alone, lead
23 to liability against a municipal entity because there is no respondeat superior liability under §
24 1983).
25

1 In addition, the record reflects that the alleged threat of solitary confinement was not
 2 carried out. Instead, within nine hours of filing his grievance, Mr. Holtz was moved to another
 3 cell unit. Dkt. 131, Kollin Declaration, at 3:1-3. With regard to the inappropriate language
 4 attributed to the deputy, “[v]erbal harassment or abuse. . . is not sufficient to state a constitutional
 5 deprivation under 42 U.S.C. § 1983.” *Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir.
 6 1997)(abrogated on other grounds as recognized in *Shakur v. Schriro*, 514 F.3d 878, 884–85
 7 (9th Cir.2008)).

9 Mr. Holt fails to show how the threat of solitary confinement and inappropriate language
 10 constituted a substantial burden on the free exercise of his religion.

11 5) **Grievance 12-1177: Request For a Private Room and Bath Facilities**

12 Grievance 12-1177 concerns Mr. Holtz’s request for a private room and bathroom facility
 13 during the four-week period from August 31, 2012 to September 27, 2012, before Mr. Holtz was
 14 transferred to the custody of the Department of Corrections. Dkt. 126, Odegard Declaration, at
 15 7:4-8:5.

17 With regard to the private bathroom facilities, Mr. Holtz asserted he could not guard his
 18 modesty in the open communal facilities. However, the record reflects that Mr. Holtz’s
 19 bathroom facility had a toilet with two metal privacy partitions, one on each side. Dkt. 128, Karr
 20 Declaration, at 4:2-6. These partitions prevented a person from being seen, from the neck or
 21 upper trunk downward, while seated on the toilet. In addition, the shower stall had a curtain that
 22 would prevent the person from being seen while showering or drying off inside. *Id.*, Karr
 23 Declaration, at 4:2-6; 4:7-11. Mr. Holtz fails to show how his bathroom facilities constituted a
 24 substantial burden on the free exercise of his religion.

26 With regard to his request for a private cell, Mr. Holtz cited two distractions to justify

1 his request: (1) other inmates were “walking around [him]” as he prayed, and (2) “a T.V.
2 constantly on.” Dkt. 126, Odegard Declaration, at 7:10-12. However, Mr. Holtz fails to show
3 how his ability to exercise his religion was burdened. At best, Mr. Holtz complains only of the
4 inconvenience of distractions inherent in shared housing, such as other inmates walking by him,
5 or the sound or images from a television. *See e.g., Canell v. Lightner*, 143 F.3d 1210, 1214-15
6 (9th Cir. 1998) (no substantial burden on free exercise of religion where correctional officer
7 disturbed prisoner’s prayers by singing Christian songs and preaching for six weeks; correctional
8 officer not acting pursuant to any state or prison policy and actions were short lived and
9 sporadic).

10 Mr. Holtz fails to show how his shared housing situation constituted a substantial burden
11 on the free exercise of his religion.

12 In addition, a restriction on an inmate’s First Amendment religious rights is valid if it is
13 reasonably related to legitimate penological interests. *See Turner v. Safley*, 482 U.S. 78, 89,
14 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). Under *Turner*, a court is to consider (1) whether there
15 is a valid, rational connection between the prison regulation and the legitimate governmental
16 interest put forward to justify it; (2) whether alternative means of exercising the right on
17 which the regulation impinges remains open to prison inmates; (3) the impact accommodation
18 of the asserted right will have on guards, other inmates, and the allocation of prison resources;
19 and (4) the absence of ready alternatives is evidence of the reasonableness of a prison
20 regulation. *Turner*, 482 U.S. at 89–91.

21 According to Defendant Pierce County, shared housing units in jail are reasonably related
22 to the legitimate governmental interest of allocating scarce prison resources. The cost of
23 building private cells for each inmate, each with separate plumbing fixtures, would have been
24

1 far more expensive than the dorm-style beds and shared bathroom fixtures afforded to Mr. Holtz.
2 Dkt. 128, Karr Declaration, at 4:24-5:1. There is also no evidence that any individual inmate
3 intentionally disrupted the prayer of others, or that prayer could otherwise not be accomplished
4 with a minimal level of inmate cooperation. Mr. Holtz provides no evidence to the contrary.

5 According to Chaplain Odegard, moving Mr. Holtz to a private cell with private
6 bathroom facilities for religious purposes as Mr. Holtz requested would have caused inmates of
7 other religions to also want private cells to facilitate prayer. Dkt. 126, Odegard Declaration, at
8 8:7-12. The jail would not have been able to accommodate all such resulting requests. *Id.*, at
9 8:11-12. In September 2012, the jail simply did not have the facilities to accommodate Mr.
10 Holt's request. *Id.*, at 8:12-13. According to Chief Karr, granting a private cell to inmates of
11 one religious group and not to another would have adversely affected the morale of inmates at
12 the jail. Dkt. 128, Karr Declaration, at 5:6-7. Mr. Holtz has failed to show how his housing
13 situation constituted a substantial burden on the free exercise of his religion.

14

15 **C. RLUIPA**

16 Mr. Holtz also claims a violation of the Religious Land Use and Institutionalized
17 Persons Act (RLUIPA). Under RLUIPA, a plaintiff bears the initial burden of persuasion on
18 whether a policy in question “substantially burdens” his “exercise of religion.” 42 U.S.C. §
19 2000cc-2(b). A substantial burden occurs “where the state. . . denies [an important benefit]
20 because of conduct mandated by religious belief, thereby putting substantial pressure on an
21 adherent to modify his behavior and to violate his beliefs.” *Warsoldier v. Woodford*, 418 F.3d
22 989, 995 (9th Cir. 2005) (*quoting Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450
23 U.S. 707, 717–18 (1981) (ruling in First Amendment context)).

1 Mr. Holtz fails to show a substantial burden occurred with regard to any of his five
2 claims. It is undisputed that Mr. Holtz was provided a Halal diet that included meat, he was able
3 to purchase Kosher food items from the jail commissary without adversely affecting his ability to
4 remain on the Halal diet, that an on demand private and non-recorded visitation booth for visits
5 with religious advisors existed at the jail, and that Mr. Holtz's conflict with the corrections
6 deputy (who allegedly threatened Mr. Holtz and used inappropriate language regarding Mr.
7 Holtz's religion) was resolved 9 hours after Mr. Holtz submitted his grievance. With regard to
8 Mr. Holtz's four-week stay in dorm-style housing, the record reflects that the shower stall in the
9 unit had a privacy curtain and the toilet had privacy partitions. And, Mr. Holtz can show no
10 more than an inconvenience with regard to the television and the other inmates walking around
11 him when he prayed.

12
13 Based on the foregoing, Mr. Holtz's RLUIPA claim should be dismissed.
14

15 CONCLUSION

16 The undersigned recommends that Defendant Pierce County's motion for summary
17 judgment (Dkt. 124) be **Granted**; Plaintiff's unexhausted religious-based claims (access to ritual
18 food items; wearing of religious dress; access to religious items; congregate prayer and religious
19 study; availability of Islamic reading material for Muslim inmates; availability of sponsors or
20 volunteers to support Muslim inmates; staff interruption during prayer; staff handling of sacred
21 religious items; and, the Responsible Living Unit) should be **dismissed without prejudice** for
22 failure to exhaust; Plaintiff's exhausted five religious-based claims (Halal meat and dessert
23 portions; purchase of Kosher food items; non-recorded visitation booth; threat and inappropriate
24 language regarding religion by correction officer; conditions of housing unit regarding prayer)
25 should be **dismissed with prejudice**.

1 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
2 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
3 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
4 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
5 Clerk is directed to set the matter for consideration on **April 17, 2015**, as noted in the caption.
6

7 **DATED** this 1st day of April, 2015.

8 
9

10 Karen L. Strombom
United States Magistrate Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26